

§ 130A-309.221. Financial assurance requirements for large projects using coal combustion products for structural fill.

(a) For projects involving placement of 8,000 or more tons of coal combustion products per acre or 80,000 or more tons of coal combustion products in total per project, the applicant for a permit or a permit holder to construct or operate a structural fill shall establish financial assurance that will ensure that sufficient funds are available for facility closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences, and subsequent costs incurred by the Department in response to an incident at a structural fill project, even if the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.

(b) To establish sufficient availability of funds under this section, the applicant for a permit or a permit holder may use insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing shown to provide protection equivalent to the financial protection that would be provided by insurance if insurance were the only mechanism used.

(c) The applicant for a permit or a permit holder and any parent, subsidiary, or other affiliate of the applicant, permit holder, or parent, including any joint venturer with a direct or indirect interest in the applicant, permit holder, or parent shall be a guarantor of payment for closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences arising from the operation of the hazardous waste facility.

(d) Assets used to meet the financial assurance requirements of this section shall be in a form that will allow the Department to readily access funds for the purposes set out in this section. Assets used to meet financial assurance requirements of this section shall not be accessible to the permit holder except as approved by the Department.

(e) The Department may provide a copy of any filing that an applicant for a permit or a permit holder submits to the Department to meet the financial responsibility requirements under this section to the State Treasurer. The State Treasurer shall review the filing and provide the Department with a written opinion as to the adequacy of the filing to meet the purposes of this section, including any recommended changes.

(f) In order to continue to hold a permit for a structural fill, a permit holder must maintain financial responsibility as required by this Part and must provide any information requested by the Department to establish that the permit holder continues to maintain financial responsibility.

(g) An applicant for a permit or a permit holder shall satisfy the Department that the applicant or permit holder has met the financial responsibility requirements of this Part before the Department is required to otherwise review the application. (2014-122, s. 3(a).)